

THE DIRECTOR OF CENTRAL INTELLIGENCE

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WASHINGTON, D. C. 20505

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Office of Legislative Counsel

22 June 1978

Mr. Michael J. O'Neil, Chief Counsel  
Permanent Select Committee on Intelligence  
House of Representatives  
Washington, D.C. 20515

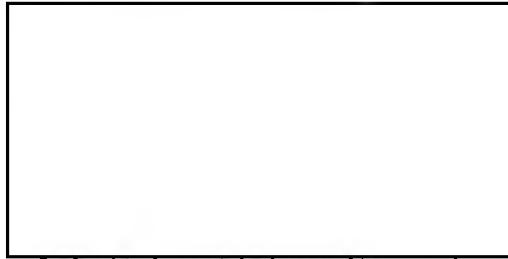
Dear Mike:

To help keep you informed of our interest in current legislation potentially impacting on the Intelligence Community or the Director of Central Intelligence, I would like to bring to your attention our concerns with H.R. 9705, the so-called "Special Prosecutor legislation" recently reported out by the House Judiciary Committee.

As proposed by the bill, section 594 of Title 28 of the United States Code would grant a special prosecutor all investigative and prosecutorial functions and powers of the Department of Justice or the Attorney General with respect to all matters in such special prosecutor's jurisdiction, except for those matters that specifically require the Attorney General's personal action under section 2516 of Title 18. Arguably, this could include access to national security information--specifically, classified information or information relating to intelligence sources and methods. Proposed section 595(a) would permit a special prosecutor to make public such information concerning his activities as he deems appropriate. We assume that this would not give a special prosecutor the discretion to determine if national security information should be included in his public statements or reports. Such a determination is the responsibility of the classifying agency or, in the case of information relating to intelligence sources and methods, the Director of Central Intelligence (50 U.S.C. 403). However, we believe the bill should be amended to make clear that a special prosecutor does not have discretion to include national security information in a public report issued in accordance with proposed section 595(a).

Similar provisions are included in legislation which passed the Senate last year (S. 555) and in the Department of Justice Authorization for Fiscal Year 1979 (S. 3151) now awaiting floor action in the Senate. Of course we have been in touch with the Office of Management and Budget on this matter but have not yet definitely decided on a course of action. We would appreciate any thoughts you might have in this regard, and we will be in touch with you.

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Acting Legislative Counsel

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